

MONTANA LEGISLATIVE HISTORY

Chapter 439 19 93

Bill H 168 S _____

Original bill & history ✓ c

H. Committee on Human Services & Aging

Hearing Date(s) Jan 18 ✓ c

_____ c

_____ c

_____ c

Date Out Jan 19 ✓ c

S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Mar 10 ✓ c

Mar 17 ✓ c

Mar 19 ✓ c

_____ c

Mar 22 ✓ c

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

2/17 TRANSMITTED TO GOVERNOR
 2/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 65
 EFFECTIVE DATE: 10/01/93

HB 166 INTRODUCED BY SPRING

CONSTITUTIONAL AMENDMENT TO REQUIRE CANDIDATE TO LIVE IN
 DISTRICT IN WHICH CANDIDATE IS SEEKING ELECTION

1/13 INTRODUCED
 1/13 REFERRED TO STATE ADMINISTRATION
 1/13 FIRST READING
 1/21 HEARING
 1/29 TABLED IN COMMITTEE

HB 167 INTRODUCED BY BRANDEWIE, ET AL.
 GENERALLY REVISE NURSERY LAWS

1/13	INTRODUCED		
1/13	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/13	FISCAL NOTE REQUESTED		
1/13	FIRST READING		
1/19	HEARING		
1/19	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE PRINTED		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	97	1
2/09	REVISED FISCAL NOTE REQUESTED		
2/15	REVISED FISCAL NOTE RECEIVED		
2/16	REVISED FISCAL NOTE PRINTED		
2/18	3RD READING PASSED	97	3
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/05	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/09	TAKEN FROM 2ND READING AND REREFERRED TO TAXATION	50	0
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	28	10
4/12	3RD READING CONCURRED	37	11
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	97	2
4/15	3RD READING AMENDMENTS CONCURRED	94	4
4/21	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 551		
	EFFECTIVE DATE: 01/01/94		

HB 168 INTRODUCED BY REHBEIN

REVISE DEFINITION OF "ADEQUATE HEALTH CARE" AND OTHER TERMS
 TO MEET FEDERAL REQUIREMENTS

BY REQUEST OF DEPARTMENT OF FAMILY SERVICES

1/13 INTRODUCED
 1/13 REFERRED TO HUMAN SERVICES & AGING
 1/13 FIRST READING
 1/18 HEARING

1/20	COMMITTEE REPORT—BILL PASSED		
1/22	2ND READING PASSED	97	1
1/25	3RD READING PASSED	95	2
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/10	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	49	0
3/26	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	99	0
4/07	3RD READING AMENDMENTS CONCURRED	96	3
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 439		
	EFFECTIVE DATE: 10/01/93		

HB 169 INTRODUCED BY EWER, ET AL.
REVISE MUNICIPAL BID AND INSTALLMENT PURCHASE LIMITS

1/13	INTRODUCED		
1/13	REFERRED TO LOCAL GOVERNMENT		
1/13	FIRST READING		
1/26	HEARING		
1/29	COMMITTEE REPORT—BILL PASSED		
2/01	2ND READING PASSED	88	8
2/03	3RD READING PASSED	80	15
	TRANSMITTED TO SENATE		
2/04	FIRST READING		
2/04	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/15	2ND READING CONCURRED AS AMENDED	49	0
2/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/03	2ND READING AMENDMENTS NOT CONCURRED	95	2
3/05	CONFERENCE COMMITTEE APPOINTED		
3/23	CONFERENCE COMMITTEE DISSOLVED		
	SENATE		
3/09	FREE CONFERENCE COMMITTEE APPOINTED		
3/12	FREE CONFERENCE COMMITTEE DISSOLVED		
3/12	CONFERENCE COMMITTEE APPOINTED		
3/23	CONFERENCE COMMITTEE DISSOLVED		
	HOUSE		
3/23	FREE CONFERENCE COMMITTEE APPOINTED		
3/26	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	5
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	90	9
	SENATE		
3/23	FREE CONFERENCE COMMITTEE APPOINTED		
3/27	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/02	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0

HOUSE BILL NO. 168

INTRODUCED BY REHBEIN
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

JANUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
JANUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 21, 1993	PRINTING REPORT.
JANUARY 22, 1993	SECOND READING, DO PASS.
JANUARY 23, 1993	ENGROSSING REPORT.
JANUARY 25, 1993	THIRD READING, PASSED. AYES, 95; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 27, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 25, 1993	SECOND READING, CONCURRED IN.
MARCH 26, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
APRIL 2, 1993	ON MOTION, CONSIDERATION PASSED

FOR THE DAY.

APRIL 5, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 7, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 168
2 INTRODUCED BY William H. L. L.
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION
6 OF "ADEQUATE HEALTH CARE" IN ACCORDANCE WITH FEDERAL
7 REQUIREMENTS; AND AMENDING SECTION 41-3-102, MCA."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 41-3-102, MCA, is amended to read:

11 "41-3-102. Definitions. As used in this chapter, the
12 following definitions apply:

13 (1) "A person responsible for a child's welfare" means
14 the child's parent, guardian, or foster parent; a staff
15 person providing care in a day-care facility; an employee of
16 a public or private residential institution, facility, home,
17 or agency; or any other person legally responsible for the
18 child's welfare in a residential setting.

19 (2) "Abused or neglected child" means a child whose
20 normal physical or mental health or welfare is harmed or
21 threatened with harm by the acts or omissions of his the
22 child's parent or other person responsible for his the
23 child's welfare.

24 (3) "Adequate health care" means any medical or
25 ~~nonmedical-remedial~~ health care, including the prevention of

1 the withholding of medically indicated treatment or
2 medically indicated psychological care permitted or
3 authorized under state law.

4 (4) "Child" or "youth" means any person under 18 years
5 of age.

6 (5) "Department" means the department of family
7 services provided for in 2-15-2401.

8 (6) "Dependent youth" means a youth:

9 (a) who is abandoned;

10 (b) who is without parents or guardian or not under the
11 care and supervision of a suitable adult;

12 (c) who has no proper guidance to provide for his
13 necessary physical, moral, and emotional well-being;

14 (d) who is destitute;

15 (e) who is dependent upon the public for support; or

16 (f) whose parent or parents have voluntarily
17 relinquished custody ~~of the child~~ and whose legal custody
18 has been transferred to a licensed agency.

19 (7) "Harm to a child's health or welfare" means the
20 harm that occurs whenever the parent or other person
21 responsible for the child's welfare:

22 (a) inflicts or allows to be inflicted upon the child
23 physical or mental injury;

24 (b) commits or allows to be committed sexual abuse or
25 exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving him the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(8) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or

psychological functioning.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(12) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(13) "Social worker" means an employee of the department of ~~family services~~ whose duties generally involve the provision of either child or adult protective services, or both.

(14) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(15) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate

1 nutrition, hydration, and medication) that, in the treating
 2 physician's or physicians' reasonable medical judgment, will
 3 be most likely to be effective in ameliorating or correcting
 4 ~~all--such~~ the conditions. However, the term does not include
 5 the failure to provide treatment (other than appropriate
 6 nutrition, hydration, or medication) to an infant when, in
 7 the treating physician's or physicians' reasonable medical
 8 judgment:

9 (a) the infant is chronically and irreversibly
 10 comatose;

11 (b) the provision of ~~such~~ treatment would:

12 (i) merely prolong dying;

13 (ii) not be effective in ameliorating or correcting all
 14 of the infant's life-threatening conditions; or

15 (iii) otherwise be futile in terms of the survival of
 16 the infant; or

17 (c) the provision of ~~such~~ treatment would be virtually
 18 futile in terms of the survival of the infant and the
 19 treatment itself under ~~such~~ the circumstances would be
 20 inhumane. For purposes of this subsection, "infant" means an
 21 infant less than 1 year of age or an infant 1 year of age or
 22 older who has been continuously hospitalized since birth,
 23 who was born extremely prematurely, or who has a long-term
 24 disability. The reference to less than 1 year of age may not
 25 be construed to imply that treatment should be changed or

1 discontinued when an infant reaches 1 year of age or to
 2 affect or limit any existing protections available under
 3 state laws regarding medical neglect of children over 1 year
 4 of age.

5 (16) "Youth in need of care" means a youth who is
 6 dependent, abused, or neglected as defined in this section."

-End-

CHAIRMAN--BILL BOHARSKI

SECRETARY--ALYCE RICE

NORMAL SCHEDULE => SITE: ROOM 104

COMMITTEE--HOUSE HUMAN SERVICES & AGING

DAYS: M,W,F

TIME: 3:00 P.M.

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0018	JOHNSON, ROYAL	ESTABLISH A FAMILY POLICY ACT							
	12/30	1/06		PASS AS AMENDED	1/8	VOTE: 16-0			1/11
HB0019	JOHNSON, ROYAL	ESTABLISH A JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES							
	12/30	1/06		DO PASS	1/8	VOTE: 14-2	APPROPRIATIONS		1/11
HB0027	SQUIRES, CAROLYN	REVISE LICENSING OF RESPIRATORY CARE PRACTITIONERS							
	12/30	1/08		PASS AS AMENDED	1/13	VOTE: 16-0			1/16
HB0075	NELSON, THOMAS	PROVIDE FOR REVIEW OF MANDATED BENEFITS BY THE INSURANCE COMMISSIONER							
	12/30	1/08	1/27 1/29	PASS AS AMENDED	2/15	VOTE: 12-4	APPROPRIATIONS		2/16
HB0118	COCCHIARELLA, VICKI	AMENDING DEFINITIONS IN MONTANA CHILD CARE ACT							
	1/07	1/13	1/15 1/20	PASS AS AMENDED	1/25	VOTE: 12-4			1/27
HB0124	MCCAFFREE, ED	BURIAL COSTS FOR INDIGENT PARENTS RESPONSIBILITY OF CHILDREN							
	1/08	1/13		PASS AS AMENDED	1/15	VOTE: 16-0			1/21
HB0135	COBB, JOHN	TRANSFER CHILD CARE PLANNING FUNCTIONS							
	1/11	1/13	2/12 2/15	TABLED ON	02/17	VOTE: 13-3			
HB0144	STANFORD, WAYNE	PROVIDE DEFINITION OF INDEPENDENT LIVING FOR VOCATIONAL REHABILITATION LAWS							
	1/12	1/18		PASS AS AMENDED	1/20	VOTE: 16-0			1/21
HB0145	COBB, JOHN	APPROPRIATION FOR A HEALTH CARE AUTHORITY; APPROPRIATION TO STATE AUDITOR							
	1/12	2/01		PASS AS AMENDED	2/5	VOTE: 16-0	APPROPRIATIONS		2/08
HB0158	KADAS, MIKE	REVISE LAWS RELATING TO THE ALTERNATIVE HEALTH CARE BOARD							
	1/13	1/18		DO PASS	1/18	VOTE: 16-0			1/20
HB0168	REHBEIN, JR., WILLIAM	REVISE DEFINITION OF "ADEQUATE HEALTH CARE", OTHER TERMS TO MEET FEDERAL LAW							
	1/13	1/18		DO PASS	1/18	VOTE: 16-0			1/20

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By VICE CHAIRMAN BRUCE SIMON, on January 18,
1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Bill Boharski, Chair (R)
Rep. Bruce Simon, Vice Chair (R)
Rep. Stella Jean Hansen, Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Ellen Bergman (R)
Rep. John Bohlinger (R)
Rep. Tim Dowell (D)
Rep. Duane Grimes (R)
Rep. Brad Molnar (R)
Rep. Tom Nelson (R)
Rep. Sheila Rice (D)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Carolyn Squires (D)
Rep. Bill Strizich (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 168, HB 158, HB 144
Executive Action: HB 158, HB 168

HEARING ON HB 168

Opening Statement by Sponsor:

REP. BILL REHBEIN, House District 21, Lambert, stated HB 168 is
necessary because the Department of Family Services has been

advised by the federal government that the state risks losing its Basic Child Abuse and Neglect Grant money, amounting to \$122,512, if the agency does not succeed in amending the statutory definition of "adequate health care" as it pertains to child abuse and neglect.

Proponents' Testimony:

Hank Hudson, Director, Department of Family Services. Written testimony. EXHIBIT 1

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SQUIRES asked Hank Hudson if the bill would be presented to the Appropriations Subcommittee on Human Services for consideration if it passed the committee and the floor, because of its fiscal impact. Mr. Hudson said the bill basically stands by itself and it was his understanding that presentation to the Appropriations Subcommittee on Human Services wouldn't be necessary.

REP. BERGMAN asked Mr. Hudson if the state had to match the federal funds. Mr. Hudson replied no.

Closing by Sponsor:

REP. REHBEIN closed.

HEARING ON HB 158

Opening Statement by Sponsor:

REP. MIKE KADAS, House District 55, Missoula, said tHB 158 is basically a cleanup bill for the Alternative Health Care Board.

Proponents' Testimony:

Dr. Michael Bergkamp, Chairman, Alternative Health Care Board, said the bill provides staggered terms for members of the board; deletes the requirement that all members be present in order to conduct board business; make fees collected by the board nonrefundable; clarifies the drugs and therapies which may be prescribed by naturopathic physicians; and clarifies the requirement for naturopathic physician endorsement. He said the purpose of the bill is to clarify the existing language, not to add to it.

Carol Grell, Attorney, Department of Commerce, Legal Counsel for

None

Questions From Committee Members and Responses:

REP. TOM NELSON stated that section 2 of the bill is redundant as it repeats section 1 and should be stricken. VICE CHAIRMAN SIMON said the two sections were from two different sections of the law so both should remain.

Closing by Sponsor:

REP. STANFORD closed.

EXECUTIVE ACTION ON HB 158

Motion: REP. HANSON MOVED HB 158 DO PASS.
Voice vote was taken. Motion CARRIED unanimously.

Vote: HB 158 DO PASS.

EXECUTIVE ACTION ON HB 168

Motion: REP. SHEILA RICE MOVED HB 168 DO PASS.
Voice vote was taken. Motion CARRIED unanimously.

Vote: HB 168 DO PASS.

ADJOURNMENT

Adjournment: 4:15 p.m.

Wm E Boharski

WILLIAM BOHARSKI, Chair

Alyce Rice

ALYCE RICE, Secretary

WB/ar

HOUSE OF REPRESENTATIVES
HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL

DATE 1-18-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN, V. CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON	✓		
REP. SHEILA RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL STRIZICH	✓		

HOUSE STANDING COMMITTEE REPORT

January 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging
report that House Bill 168 (first reading copy -- white) do
pass .

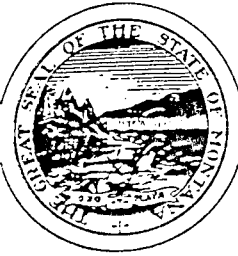
Signed: _____

Wm E Boharski

Bill Boharski, Chair

140958SC.Hss

DEPARTMENT OF FAMILY SERVICES

EXHIBIT 1DATE 1-18-93HB 168

MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTORPO BOX 8005
HELENA, MONTANA 59604-8005

January 18, 1993

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 168

The Department of Family Services recently received notice from the federal Department of Health and Human Services that the state risks losing its Basic Child Abuse and Neglect Grant money, amounting to \$122,512, if the agency does not succeed in amending the statutory definition of "adequate health care" as it pertains to child abuse and neglect. The requested amendment simply removes "nonmedical remedial" care from the definition of "adequate health care".

The intent of this amendment is to ensure that mandatory reporters of child abuse or neglect will report a parent's failure to seek conventional medical treatment for their ill child. The federal agency has stated that sanctions will not be imposed if the agency investigates a referral of failure to provide adequate health care, but does not find that the withholding of traditional medical treatment for religious reasons is neglectful. They are just concerned that the potential neglect be referred to the agency for investigation, so that risk to the child can be assessed.

The CAN Grant is critical to DFS operations and community programs. In addition to the Basic CAN Grant that is directly affected, the department's eligibility for funding of the Children's Justice Act Grant of \$71,060 is contingent upon the agency's eligibility for the CAN Grant. These grants are used to fund mini grants for many community programs as: good touch/bad touch programs; local prevention programs; counseling for abused children in battered woman's shelter; fetal alcohol syndrome training in high schools and junior highs; and parenting classes for adults and teenagers.

Both the CAN Grant and CJA Grant are also used to fund training for social workers and other professionals, including: introductory training for new social workers, sexual abuse training, training regarding abuse issues for native americans; and a child abuse hot line. The remainder of the Grants goes to other programs, travel, resource materials and administrative costs. The agency would have a difficult, if not impossible task in providing funding for these programs and training without the CAN Grant and Children's Justice Act Grant.

I urge your support of HB 168.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services COMMITTEE BILL NO. 168
DATE 1/18/93 SPONSOR(S) Rep. Lehman
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Hank Hudson	DFS	☒	☐
ED Caplig		☐	☐
_____	_____	☐	☐
		☐	☐
		☐	☐
		☐	☐
		☐	☐
		☐	☐
		☐	☐
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		☐	☐
		☐	☐
		☐	☐
		☐	☐

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE BILLS STATUS SHEET

Public Health

COMMITTEE

BILL NUMBER	ENTERED COMMITTEE	CONSIDERED	OUT OF COMMITTEE	BCI BE CONCURRED IN	BNCI BE NOT CONCURRED IN	BCIAA BE CONCURRED IN AS AMENDED	BNCIAA BE NOT CONCURRED IN AS AMENDED
HB 18	1/16	1/22, 1/25	1/25			X	
HB 27	1/22	3/5	3/5			X	
HB 28	1/13	1/20	1/20	X			
HB 107	1/29	3/17	3/19		X		
HB 117	1/30	1/25	1/26	X			
HB 118	2/3	3/10	3/22	X			
HB 144	1/28	3/12	3/12	X			
HB 148	1/30	3/19	3/22	X			
HB 158	1/27	3/15	3/19	X			
HB 168	1/27	3/10	3/19			X	
HB 190	2/4	3/19	3/22			X	
HB 211	2/12	3/5	3/5	X			
HB 220	2/11	3/10	3/26			X	

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on March 10, 1993,
at 3:00 p.m.

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Tom Hager

Members Absent: None.

Staff Present: Tom Gomez, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 168, HB 220, HB 118
Executive Action: HB 241, SB 305

EXECUTIVE ACTION ON HB 241

Discussion:

Mona Jamison, Laboratorians for Licensure, went over the
amendments proposed by Rep. Strizich. (Exhibit #1)

Motion/Vote:

Sen. Franklin moved the amendments to HB 241. The motion carried
UNANIMOUSLY.

Motion/Vote:

Vote:

The motion to PASS SB 305 AS AMENDED CARRIED, with Sen. Mesaros and Sen. Rye voting "no". Chairman Eck said the vote would remain open until Sen. Towe could vote on the bill.

HEARING ON HB 168Opening Statement by Sponsor:

Rep. Bill Rehbein, House District 21, said HB 168 was a bill requested by the Department of Family Services (DFS), because they had been advised that 43-3-102 must be amended as in HB 168, or risk losing \$122,512 in grant money. This grant money requires no state matching. HB 168 eliminates two words, "non-medical remedial" in current statute. Rep. Rehbein said it was his understanding there was an amendment to HB 168.

Proponents' Testimony:

Ann Gilkey, Department of Family Services, provided written testimony. (Exhibit #4)

Opponents' Testimony:

Les Conger, Christian Science Committee on Publication for Montana, provided written testimony. (Exhibit #5)

Questions From Committee Members and Responses:

Sen. Franklin asked Ann Gilkey what has been the position of the state regarding non-mainstream treatment and the vulnerability of children. Ms. Gilkey said the Department was very sensitive to the religious freedom of Montanans, however, if they receive a referral that a child is not receiving medical treatment for a potentially permanently life-damaging or life-threatening illness, then it will be taken to court. With existing "non-medical remedial" language, courts have a difficult time finding child neglect. If HB 168 passes, a judge could make it binding for a child to receive medical treatment.

Sen. Franklin asked Ms. Gilkey if she had seen the amendment. (Exhibit #6) Ms. Gilkey said she had, and it is the language accepted by the federal government.

Sen. Christiaens asked Ms. Gilkey if a review had been done to see how other states with Christian Science Practitioners deal with this problem. Ms. Gilkey said it was her understanding from the opponent's testimony that three states had chosen not to

amend their statutes to be consistent with federal requirements.

Sen. Christiaens asked Ms. Gilkey if this were a situation that could have a waiver from the federal government. Ms. Gilkey said that option had not been offered.

Sen. Klampe asked Les Conger if Christian Scientists ever went to the doctor. Mr. Conger said yes, it was up to each family.

Sen. Klampe asked Mr. Conger for what kinds of cases would a Christian Scientist go to the doctor. Mr. Conger said it was common to go to a surgeon for a broken bone, to a dentist, or to an optometrist, but other than that, he could not give a general answer. The Church does not set forth a doctrine, but they try to rely on prayers for healing for themselves and their children. The services of a full-time Christian Science Practitioner are called upon when needed. Mr. Conger said there were also Christian Science nurses who were not engaged in the business of medical nursing, but are there to help comfort those who need it. Medicare does recognize Christian Science care.

Sen. Franklin asked Mr. Conger if the amendment moved in the right direction. Mr. Conger said it did because it intends to protect parents to a certain extent. However, a contradiction is left in the law. Mr. Conger said California, Pennsylvania and Maryland had chosen not to change the language in their codes.

Sen. Rye pointed out to the Committee that this situation would also apply to Jehovah's Witnesses who will not allow blood transfusions, and they will not have anything to do with secular government, so they are not testifying.

Sen. Christiaens asked Ms. Gilkey to what she was referring by the term "self-limiting illness." Ms. Gilkey said it would be any illness that passes, and the individual gets better whether or not medical care is received. Diabetes or cancer are not self-limiting illnesses, but require medical care, and for these cases the state might want to get involved.

Sen. Christiaens said that because it was mentioned in testimony that this type of care is covered by Medicare, there is the opportunity for a waiver, and this should be addressed.

Ms. Gilkey said Medicaid pays for some Christian Science Nurse Practitioner bills, but this is not in the area of a Medicaid or Medicare waiver.

Sen. Christiaens said that there were 27 different options, and therefore what Ms. Gilkey is describing is one of the options. The state is not required to offer any of these, but they do.

Ms. Gilkey said she was not well versed in the Medicare/Medicaid areas, and could not address the waiver issue.

Chairman Eck asked Ms. Gilkey if she would provide the Committee with information about specific federal offices which provide grants, and their requirements. Also, any information regarding attempts to change rule or to change law. Chairman Eck asked Ms. Gilkey if she knew if naturopathic or other non-traditional practices were considered medical. Ms. Gilkey said she was not sure, and that she was not aware of a case where acupuncture was used to try and cure cancer or other life-threatening illnesses.

Closing by Sponsor:

Rep. Rehbein said this was the most discussion there had been on HB 168. The passage of HB 168 will keep the Department of Family Services in compliance with federal law, and it was his understanding that the amendment addressed Mr. Conger's concerns with the bill.

HEARING ON HB 220

Opening Statement by Sponsor:

Rep. Bruce Simon, House District 91, said he feels very passionate about HB 220. The bill states that the health care facility caring for a patient with an infectious disease shall notify the emergency care provider of possible exposure. Rep. Simon said emergency care providers, fire fighters for example, work under strenuous conditions, sometimes involving broken glass or twisted metal, in the dark, and they are required to provide medical assistance. HB 220 does not require the name of the patient, because the incidents are recorded by number. The bill does not require mandatory testing of anybody, but allows for emergency care providers who may have been exposed to know about it. Rep. Simon urged the Committee's support of HB 220.

Proponents' Testimony:

Tim Bergstrom, Montana State Firemen's Association, said in 1992, Billings fire fighters responded to 6000 incidents, and 60% of those were emergency medical in nature. The issue of communicable and infectious disease has taken on a new urgency in recent years. The International Association of Fire Fighters 1991 survey reported that 1 out of 27 fire fighters were exposed to infectious diseases in 1991. 14.7% exposed to tuberculosis, 17.2% exposed to hepatitis-b, 36.9% exposed to HIV, and 31.2% exposed to other forms of communicable diseases. Mr. Bergstrom said barrier protections have mandatory use in Montana, and failure to comply with this results in strict disciplinary action. Ongoing training programs are available to fire fighters. They routinely respond to emergency medical calls involving bleeding individuals under poor conditions. Under these strenuous conditions, the mandatory use of barrier protections is often breached. In addition, if a victim is

ROLL CALL

SENATE COMMITTEE Public Health DATE 3-10-93

[illegible]

FC8

Attach to each day's minutes

DEPARTMENT OF FAMILY SERVICES

MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTORPO BOX 8005
HELENA, MONTANA 59604-8005

March 10, 1993

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 168

The Department of Family Services received notice from the federal Department of Health and Human Services (HHS) that the state risks losing its Basic Child Abuse and Neglect Grant money, amounting to \$122,512, if the agency does not succeed in amending the statutory definition of "adequate health care" as it pertains to child abuse and neglect. In its original form, HB 168 simply removed "nonmedical remedial" care from the definition of "adequate health care". Legislative Council has drafted amendments to HB 168. The department has reviewed these and has no objection to them.

The intent of the bill as amended is to ensure that mandatory reporters of child abuse or neglect will report a parent's failure to seek conventional medical treatment for their ill child. HHS has stated that financial sanctions will not be imposed against the state if referrals of failure to seek traditional medical care are made to DFS staff who must investigate these referrals. There is no requirement that DFS find that the withholding of traditional medical treatment for religious reasons is neglectful. The federal government is just concerned that the potential neglect be referred to the agency for investigation, so that risk to the child can be assessed and action taken if deemed necessary.

The CAN Grant is critical to DFS operations and community programs. In addition to the Basic CAN Grant that is directly affected, DFS's eligibility for funding of the Children's Justice Act Grant of \$71,060 is contingent upon the agency's eligibility for the CAN Grant. These grants are used to fund mini grants for many community programs such as: good touch/bad touch programs; local prevention programs; counseling for abused children in battered woman's shelter; fetal alcohol syndrome training in high schools and junior highs; and parenting classes for adults and teenagers.

Both Grants are used to fund training for social workers and other professionals, including: training for new social workers; sexual abuse training; training regarding abuse issues for native americans; and a child abuse hot line. The remainder of the Grants go to other programs, travel, resource materials and administrative costs. The agency would have a difficult, if not impossible task in providing funding for these programs and training without the CAN Grant and Children's Justice Act Grant.

 Christian Science Committee on Publication
for Montana

10455 Gee Norman Road
Belgrade, MT 59714
(406) 388-4040

SENATE HEALTH & WELFARE

EXHIBIT NO. 5

DATE 3-10-93

BILL NO. HB 168

March 10, 1993

Senate Committee on Public Health, Welfare, and Safety
Capitol Station
Helena, MT 59620

Chairman Eck and Members of the Committee:

My name is Les Conger. I am Christian Science Committee on
Publication for Montana.

First, I would like to express my gratitude for the opportunity
to participate in our state's legislative process. I appreciate
the committee's openness to citizen concerns and your standards
of fairness and sensitivity to the rights of all Montanans
under our state constitution.

House Bill 168 may appear to some to make only a minor change in
the law pertaining to child abuse and neglect. The primary
change is the deletion of two words from the definition of
"adequate health." But the potential impact of the change
would be to restrict the rights of all Montana families who
rely on spiritual healing or any form of health care outside
of conventional medical treatment.

I'm not sure why the Federal Health and Human Services Department
wants this change in Montana law, but they did recognize that it
would be "a complex issue that may be difficult to resolve..."
(Second page, fourth paragraph of DHHS letter dated Dec 4, 1992)
In fact, three other states so far have decided not to make
this change in their laws, even though they stand to lose
Federal money as a result. I believe Montana should do so as
well.

For many generations now, Christian Science families throughout
the state have relied on their worship of God as their primary
method of health care. Until now, our laws have not denied them
that right and Christian Science parents have been conscientious
in obeying laws that are designed to protect public health,
such as the requirement to report contagious disease. I
remember when I was a first-grader and had whooping cough, as
well as some of the other so-called children's diseases, our

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house was quarantined. My mother had engaged a Christian Science Practitioner to provide the treatment for me, and my main memory of this time was that I had to stay home from school for what seemed like weeks. I'm sure it couldn't have been an enjoyable experience, but I don't remember any serious discomfort. I must have recovered from each of the diseases pretty quickly because my main concern, in the case of the whooping cough, and later even more when I was home with measles and chicken pox, was all the school work I was missing. I was concerned that I might not "pass" into second grade, I guess, and I tried to do all the work sent home by the teacher. One thing I do remember clearly is the name of the Christian Science practitioner. I remember how kind and loving she was when she talked to me. And I am sure that I was well enough to go back to school well before the quarantine time was up.

My point here is not nostalgia, it is that if House Bill 168 had been Montana law when I was under Christian Science care as a child, I would have been considered to have inadequate health care and a social worker could have removed me from my home even though my parents were taking care of me in the best way they could. Today we are all concerned about family values, about the family as the basic institution in society. Another piece of legislation introduced during this session states it this way: "because our entire society benefits when families function well, it is in society's best interest to ensure that public policies and programs support and strengthen family life:"

Christian Science families make up only a small minority of Montana's population, but their contribution to the strength of the state goes beyond their number. They tend to be fully functional families. The parents take their responsibilities seriously. They take good care of their children. They respect the law. They have high standards. Minorities, including Christian Scientists, are in a special position in a democracy. In a sense, they are dependent on the will of the majority. But special measures to protect the religious practice of religious minorities have enriched the legislative history of our nation. Specific practices of Quakers, Jews, Amish, Catholics, Mennonites, Seventh Day Adventists have long been protected in the laws of our land.

To Montana's Christian Science families, reliance upon God's protective and healing power is a very natural aspect of everyday life. They find it to be the best health care they could ever hope for. They depend on it. It is more than adequate to meet the needs of the children who are already learning to pray for themselves and for their friends; their brothers and sisters. How can this legislature tell these parents, grandparents, and children that their way of life is outside the law of Montana?

The Montana code that would be changed by this bill is the one whose purpose is to protect minors and children from harm. Quoting from MCA 41-3-101: "It is hereby declared to be the policy of the state of Montana to: (a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development; (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth; (c) achieve these purposes in a family environment whenever possible; and (d) preserve the unity and welfare of the family whenever possible.

One question, then, has to be this: How could the purpose of this law be strengthened or improved by this bill? Will children's welfare be better served, and the unity and welfare of the family be better preserved, by allowing only conventional medical treatment for these children? In other words, does this bill solve a current problem in our state? If it does I'm not aware of it.

I had hoped there would be a way to amend this bill that would satisfy the Federal request and still preserve the rights of families to utilize the proven health care they trust.

I believe the research analyst who supports this committee has recommended changes that include an amendment that would be a step in the right direction. However, as long as "adequate health care" for a child is defined only as "any medical health care", the bill would in effect direct a social worker to remove a child from the home any time the child is receiving care that the social worker does not recognize as traditional medical treatment. I don't believe Montana should be that narrow in its tolerance of religious freedom and alternative methods of health care.

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Amended H.C.
3-10-93
HB-168

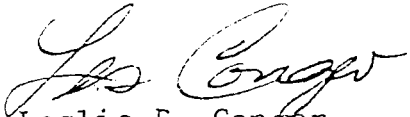
Chairman Eck and Members

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March 10, 1993

I respectfully ask that this committee not pass House Bill 168.

Sincerely,

A handwritten signature in cursive script, appearing to read "Les Conger".

Leslie R. Conger
Committee on Publication

Amendments to House Bill No. 168
Third Reading Copy

For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 26, 1993

1. Page 1, line 24.

Following: "(3)"

Insert: "(a)"

2. Page 2, line 4.

Following: line 3

Insert: "(b) Nothing in this chapter may be construed to require a finding of child abuse or neglect when a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when the child's health requires it."

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on March 17, 1993,
at 3:10 p.m.

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Hager

Members Absent: None.

Staff Present: Tom Gomez, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 107, HB 610, HJR 4
Executive Action: SB 177, HB 118, HB 168

EXECUTIVE ACTION ON SB 177

Discussion:

Chairman Eck said SB 177 had been amended into SB 305.

Motion/Vote:

Sen. Christiaens moved to TABLE SB 177. The motion carried
UNANIMOUSLY.

EXECUTIVE ACTION ON HB 168

Discussion:

Chairman Eck said there were amendments to HB 168, and a vote would wait until Sen. Towe could be present.

EXECUTIVE ACTION ON HB 220

Discussion:

Chairman Eck said that Executive Action would be postponed until March 26, 1993. Amendments were being worked on.

Sen. Christiaens said he had received information regarding other states' laws concerning exposure notification. This information will be made available for Committee members during Executive Action on the bill.

Chairman Eck said Rep. Simon would be out of town until later next week.

HEARING ON HB 107

Opening Statement by Sponsor:

Rep. John Cobb, House District 42, said HB 107 addressed Sunrise audits which are currently done by the Legislative Auditor's office. Rep. Cobb said there is a hearing, and the bill is "cleaned up" before being sent to administrative committees in Legislature. The Legislative Auditor's office does not want to continue to do the Sunrise audits nor do they want to have hearings. The Legislative Auditor's office has tried to give the job to the Administrative Code Committee. The Code Committee does not want the job either, so the House State Administration Committee suggested the job be abolished all together. The Sunrise audit was formed to avoid long discussions and subcommittees in the legislature. The Auditor's office is currently paid \$1000.00 to do the audits, and they think this may be illegal. Sunrise audits started in the Senate. Rep. Cobb said it does provide a service, but it not proper to charge \$1000.00.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

what parts of SB 389 they agree to. There have been some good responses, and he is hopeful that favorable responses will continue once the amendments are finished. Sen. Towe said he was encouraged.

Sen. Christiaens asked Sen. Towe if he had received amendments from Susan Callahan at the Montana Power Company. Sen. Towe said he had.

Sen. Christiaens asked Sen. Towe if he had received a letter from Cenex. Sen. Towe said he had, but that he hadn't been able to reach them. This was one of his concerns.

Chairman Eck suggested that Committee members speak with Tom Gomez if they have questions regarding the amendments to SB 389.

Sen. Rye said he appreciated Sen. Towe's "conciliatory" approach to SB 389. He thanked Sen. Towe for his "wise and mature" approach to working out differences with Billings industries.

EXECUTIVE ACTION ON HB 168

Discussion:

Chairman Eck said the first set of amendments to HB 168 cleaned up many technical problems with the bill. (Exhibit #3) Chairman Eck said the second set of amendments were developed in cooperation with Les Conger of Christian Science Publications. (Exhibit #4) The amendment doesn't completely satisfy their concerns, but it makes the bill more acceptable. Chairman Eck said that Ann Gilkey of the Department of Family Services had provided the Committee with a packet of information. (Exhibit #5) This information covers other states' decisions concerning Medicaid reimbursement.

Sen. Towe said there were no amendments in the information packet.

Sen. Christiaens said Social and Rehabilitation Services (SRS) is putting together a package of Medicaid options and waivers. Sen. Christiaens said that perhaps this could be included as one option.

Chairman Eck said the Medicaid option was not needed to adopt the amendments offered.

Tom Gomez said HB 168 does not relate to Medicaid, but to grants provided to the Department of Family Services under different provisions of the law. The most noted law is the Child Abuse and Neglect Prevention Act, which is referenced in the material provided by Ann Gilkey. The issue is the requirement for receiving the grant, specifically a definition of adequate health

care to a child. HB 168 really only involves striking on Page 1, Line 25, the words "or non-medical remedial". The bill relates to the Child Abuse and Neglect Prevention Program which is funded with federal grants, and the conditions to receive the federal money.

Chairman Eck asked Tom Gomez if the second amendment (Exhibit #4) is adopted, is the Department still able to receive the grant. Mr. Gomez went over the second amendment. The language was based upon a code of federal regulations that allows a state to either prohibit a finding of child abuse or require a finding based upon providing religious healing in lieu of traditional medical care. This language states that it would not be necessary to find a case of child abuse or neglect in the instance where religious healing is provided to a child. However, nothing in HB 168 would prevent the state or a court from taking action to insure that medical care is provided in circumstances where it is shown the child's health requires it.

Sen. Klampe said the language in the second amendment was "perfect."

Motion:

Sen. Klampe moved the Committee adopt that amendment. (Exhibit #4)

Discussion:

Sen. Christiaens said he did not feel comfortable with the language in that amendment.

Sen. Towe asked Tom Gomez if the amendment ought to be satisfactory as far as the federal government is concerned. Mr. Gomez said the Denver regional office informed him that the language was satisfactory.

Sen. Towe asked if the language had been agreed to by Mr. Conger. Chairman Eck said Mr. Conger thinks the language helps the bill, but he would rather have the Committee not pass the bill.

Tom Gomez said there were technical amendments. (Exhibit #3)

Chairman Eck said there are concerns about the removal of a child from his home if medical care was not being provided. This is not in the amendment.

Sen. Christiaens said this issue has got to have come up in other states, and the Committee must be able to find compatible language that will work.

Sen. Klampe said the language in question is fine, and leaves room for Christian Scientists.

Sen. Rye asked Sen. Klampe what would happen if a Jehovah's Witness family has a child that needs a blood transfusion, but their religion prohibits. Sen. Rye asked if the language gives the state the authority to remove the child from that home. Sen. Klampe said it would.

Tom Gomez added that the parents could not be charged with child abuse or neglect. However, reports of children being denied medical care must be investigated, even in the case of religious beliefs. If the child's life is found to be in jeopardy, the state would request medical care for that child.

Sen. Christiaens said there must be other state's codes regarding religious exemptions that could be included in this instance.

Sen. Mesaros said the amendment in question can be interpreted in many different ways, and the Committee should go beyond the language here for clarification.

Sen. Towe said his concerns were the last seven words of the amendment, "when the child's health requires it." Many cases require medical treatment, and the language is vague. Sen. Towe said he would like to see if there is other language that could be used, for example, "when the child's life is in danger."

Sen. Klampe said the amendment cannot be written any more clearly than it already is. The first sentence makes room for Christian Scientists, and he does not see Christian Scientists as "unreasonable people" who never go to see a doctor.

Sen. Mesaros said that the Committee only heard one individual's testimony.

Chairman Eck asked the Committee members if they had been receiving a lot of mail about HB 168. The Committee members said they had.

Chairman Eck said some Christian Scientists feel that broken bones can be repaired through prayer.

Sen. Franklin said the difficult thing about this bill is the theological decision being made compared to medical science.

Sen. Rye said the argument could be made that physicians do not heal people, but they merely allow the body to heal itself through a "divinely inspired" process. Sen. Franklin said she did not disagree.

Sen. Rye said the theological and the medical arguments are not necessarily mutually exclusive. Sen. Rye suggested that Sen. Klampe withdraw his motion because Sen. Towe believes he can improve the language.

Tom Gomez said the amendment he offered was a very conservative

effort.

Sen. Christiaens said he had some concerns about HB 168, and about a letter he'd received from Rita Swanson. Conclusions are being drawn that support judiciously taking children from their homes for health purposes.

Sen. Towe suggested, "Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect..." Sen. Towe said this language may be too strong. Sen. Towe continued "However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to insure that medical care is provided to the child when there is a substantial risk of harm to the child's health." That language came out of the regulations, but this may still be too weak.

Sen. Klampe said he didn't think this suggested language changed the meaning of the amendment.

Sen. Christiaens asked if Tom Gomez could continue to work on the amendment, so it could be discussed at the next meeting of the Committee.

Sen. Towe asked Sen. Christiaens what his concerns were so they could be addressed. Sen. Christiaens said he wanted to know what the 38 other states had done in terms of religious exemptions, because there must be language that could be adopted.

Sen. Towe said there were substantive questions that were still not clear in his mind. He asked if the Committee wanted to say that, under no circumstances, could parents be accused of child abuse if there is a religious belief involved. Or, are there circumstances under which the Committee would want to allow the accusation of child abuse, even where religious belief are involved.

Chairman Eck said a child can be removed without charges of child abuse.

Sen. Towe said that is the other part of the argument, and he is inclined to say that if the religious beliefs are genuine, and the lack of medical care is attributed to genuinely held religious beliefs, then there should be no prosecution for child abuse. Sen. Christiaens said he agreed with Sen. Towe.

Sen. Rye said he agreed as well, but he said the language could justify satanic abuses of children if the Committee is not careful.

Sen. Franklin asked if the Committee would have to take into consideration what qualifies as a religious belief. Sen. Towe said that all revolves around the words "ceremony", "rite" or "ritual." Sen. Towe said the topic now is not providing medical health care, not harmful abuses.

Sen. Franklin said she had concerns about people claiming divine inspiration for really neglecting a child's health, which would be inappropriate.

Sen. Towe said that was a good argument.

Sen. Klampe said it seemed that the discussion was going beyond the title of the bill, and it was necessary to stay within the scope of the bill.

Chairman Eck asked Tom Gomez to ask the legislative librarian for information from other states about this issue.

Motion:

Sen. Klampe withdrew his motion to adopt the amendment. (Exhibit #4)

Discussion:

Chairman Eck said executive action on HB 168 would be postponed.

EXECUTIVE ACTION ON HB 220

Discussion:

Chairman Eck said the medical technicians have met with the Department of Health, and amendments are being discussed. They do not want to have executive action on the bill until after March 24, 1993.

EXECUTIVE ACTION ON HB 118

Discussion:

Chairman Eck said the bill defined day care so that sick children could be cared for. There were no opponents to the bill during the hearing.

Sen. Christiaens asked Chairman Eck what HB 118 did. Chairman Eck said the bill excludes care provided by a parent or other individual who lives with the child in the definition of day care. If a relative does not live with the child and cares for that child, they are included. The bill also licenses small facilities that provide day care for sick children.

Motion:

Sen. Rye moved HB 118 BE CONCURRED IN .

Discussion:

ROLL CALL

SENATE COMMITTEE Public Health DATE 3-17-93

[illegible]

Amendments to House Bill No. 168
Third Reading Copy

For the Senate Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 25, 1993

1. Title, line 6.

Strike: "IN ACCORDANCE"

Insert: "AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND
NEGLECT LAWS IN ORDER TO CONFORM"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS 40-8-111,"

Following: "41-3-102,"

Insert: "41-3-609,"

3. Page 1, lines 19 through 23.

Following: "neglected" on line 19

Insert: ""

Strike: remainder of line 19 through "welfare" on line 23

Insert: "means the state or condition of a child who has suffered
child abuse or neglect"

4. Page 1, line 25.

Strike: "health"

5. Page 2, line 6.

Following: line 5

Insert: "(5)(a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in
subsection (8); or(ii) threatened harm to a child's health or welfare, as
defined in subsection (15).(b) The term includes harm or threatened harm to a child's
health or welfare by the acts or omissions of a person
responsible for the child's welfare."

Renumber: subsequent subsections

6. Page 3, line 3.

Following: "education, or"

Insert: "adequate"

7. Page 6.

Following: line 6

Insert: "Section 2. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption
of a child may be decreed when there have been filed written
consents to adoption executed by:(a) both parents, if living, or the surviving parent of a
child, provided that consent is not required from a father or

mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)~~~~(d)~~(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)~~~~(d)~~(8)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.""

Amendments to House Bill No. 168
Third Reading Copy

For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 26, 1993

1. Page 1, line 24.

Following: "(3)"

Insert: "(a)"

2. Page 2, line 4.

Following: line 3

Insert: "(b) Nothing in this chapter may be construed to require a finding of child abuse or neglect when a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when the child's health requires it."

DEPARTMENT OF FAMILY SERVICES

EXHIBIT NO. 5DATE 3-17-93BILL NO. HB 168

(406) 444-5900

FAX (406) 444-5956

MARC RACICOT, GOVERNOR

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTORPO BOX 8005
HELENA, MONTANA 59604-8005

March 17, 1993

TO: Sen. Dorothy Eck, Chair
Public, Health, Welfare and Safety Committee

FROM: Ann Gilkey, Legal Counsel

RE: HB 168

I have enclosed information that the committee requested at the hearing on HB 168 last week.

With respect to Sen. Christiaens request for information on Medicaid waiver, I spoke with Nancy Ellery, Administrator of the Medicaid Division at SRS. She informed me that Montana does not currently have a Medicaid option for Christian Scientist Nurse Practitioners. Some other state's apparently have such an option which allows for Medicaid reimbursement for services provided by the nurse practitioners, even though they are not licensed.

I hope this information is helpful to the committee. If there is anything else I can provide for you, or any questions that you or the committee feel are unanswered, please give me a call.

Thank you for consideration of HB 168. We greatly appreciate your support.

DEPARTMENT OF FAMILY SERVICES



MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

March 17, 1993

TO: Ann Gilkey
Chief Legal Council

FR: Kandice Morse *KM*
Program Officer II

RE: Eligibility for Basic State Grant and Children's Justice Act

As you are aware, the Department of Family Services has been notified by the U.S. Department of Health and Human Services that it will lose its eligibility for the Basic State Grant if it does not change its statutory religious exemption language. If Montana loses eligibility for the Basic State Grant, it will also lose the Children's Justice Act Grant, for which eligibility for the Basic State Grant is a criterion.

These two grants provide essential funding for staff training and community-based programs throughout the state. The current funding level for the Basic State Grant is \$106,527. These funds support \$30,000 in mini-grants for community-based prevention and treatment programs, such as educational programs in schools, parent self-help groups, and parent education and training programs. Examples of programs currently being funded are the Positive Indian Parenting program in Hardin which provides culturally sensitive parenting classes to Native American individuals, the St. Thomas Child and Family Center's Parents Anonymous support group in Great Falls, and the Touch program in Glasgow which uses a play to teach elementary school children about "good" and "bad" touching. The remaining funds are used for basic training of DFS social workers and foster and adoptive parents.

The current level of funding for the Children's Justice Act is \$71,060. These funds are to be utilized to improve the handling of child abuse, specifically sexual abuse, cases. Currently, this money is funding the statewide child abuse hotline, training for DFS social workers on working with sexually abused children and on DFS child abuse policies, training for DFS staff and community professionals on working with Native American abused children, and the purchase of sexual abuse interviewing materials

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Exhibit #5

3-17-93

HB-168

Gilkey memo
March 17, 1993
Page 2

for DFS county offices. Funds have also been allocated for the creation of a statewide child death review team.

If DFS loses eligibility for these funds, the effects would be felt throughout DFS and the whole child abuse prevention and treatment community. These grant funds are needed to both start new community-based programs and maintain existing programs which help treat children or prevent child abuse. DFS always has more programs apply than it can fund and many of these programs could not exist without this financial help.

Grant monies also provide essential training to DFS staff and other community professionals. DFS is currently relying heavily on federal money to provide basic staff training because of a lack of state funds for training activities. This training increases workers' ability to respond to child abuse and neglect referrals, develop treatment plans for parents, and provide services to clients, and also increases the chances that staff will act within DFS policy guidelines.

Changing this statutory language will keep DFS eligible for approximately \$200,000 in federal funds that the agency desperately needs. Let me know if there are any further questions that I can answer about these grants or programs.

CHILD ABUSE AND NEGLECT (CA/N) FEDERAL GRANTS

DESCRIPTION/GOALS OF FEDERAL CA/N GRANTS RECEIVED:

(1) Basic State Grant for Child Abuse and Neglect (CA/N):

The federal government's Basic State Grant Program for Child Abuse and Neglect is a non-competitive grant program designed to encourage states to have a model approach to child abuse and neglect. Funded by the federal Administration for Children and Families, program guidelines for this grant allow states to use these funds to improve activities for preventing and treating child abuse and neglect. The grant's guidelines are very broad, but encourage states to relate grant expenditures to their state's Title IV-B Child Welfare Services plan. In Montana DFS has the responsibility for creating the state IV-B plan.

(2) Baby Doe/Infant Medical Neglect Grant:

The Baby Doe Grant Program of the federal government's National Center for Child Abuse and Neglect awards a non-competitive "Baby Doe" grant to Montana and all other states. The amount of the award is based on a formula related to the population of a state, with each state receiving at least a base/minimum amount regardless of population. The purposes of the Baby Doe funds are (a) to assist states in responding to reports of medical neglect of infants, including the withholding of medically-indicated treatment from disabled infants with life-threatening conditions, and (b) to improve service provision to disabled infants with life-threatening conditions and their families.

SERVICES PROVIDED:

I. The Basic State CA/N Grant provides the following services:

1. CA/N mini-grants (totalling \$30,000 statewide) for small community-based prevention and treatment programs, including:
 - a. educational programs in schools.
 - b. start-up costs for parent self-help groups, and
 - c. parent education and training programs.
2. Statewide child abuse and neglect prevention activities.
3. Training for DFS staff or professionals involved with child abuse and neglect.

II. The Baby Doe Grant provides the following services:

1. Staff training to improve the state's response to "Baby Doe" infants, as defined above.

BUDGET AND FUNDING:

Both the Basic State CA/N Grant Program and the Baby Doe Grant Program are funded entirely by federal funds from the Department of Health and Human Services' National Center for Child Abuse and Neglect.

	FY 94	FY 95
Federal special revenue funds	\$122,512	\$122,512
Total funding costs	\$122,512	\$122,512

PERFORMANCE INDICATORS:

The DFS program officer monitors the quarterly financial reports sent to the Department of Health and Human Services by DFS to ensure that money is expended for the services outlined in the grant application submitted by DFS. DFS field staff and community professionals are utilized to review CA/N mini-grant proposals received by DFS to ensure (a) local input concerning which programs are funded and (b) local monitoring of program performance.

TARGETS:

Basic State CA/N Grant:

1. Continue funding CA/N mini-grants, at least at the current levels of \$30,000 statewide per year.
2. Increase public awareness of the availability of CA/N mini-grants by adding five new organizations to the mailing list for the Request for Proposals each year.
3. Provide training to 500 DFS professionals each year, including DFS protective services social workers.

Baby Doe Grant:

1. Train 100 DFS staff each year in the handling of Baby Doe cases.

CHILDREN'S JUSTICE ACT

PROGRAM DESCRIPTION AND GOAL:

The Department of Family Services receives Children's Justice Act funds under a non-competitive federal grant program with the goal of improving each state's handling of child abuse cases, particularly cases of child sexual abuse.

SERVICES PROVIDED:

1. Training of professionals in the handling of cases of child sexual abuse, in order to accomplish the following objectives:
 - a. improve the handling of victims when they appear as witnesses in court;
 - b. improve the effectiveness of prosecution;
 - c. assure that alleged abuse perpetrators' rights are not abridged; and
 - d. assure that handling of all aspects of the investigation and prosecution of child sexual abuse is done in a manner which limits additional trauma to the child victim.
2. Training for members of potential child death review teams.
3. A state-wide child abuse toll-free hotline.

BUDGET AND FUNDING:

The funding for the Children's Justice Act services provided by DFS is 100% federal funds from the Department of Health and Human Services.

	FY 94	FY 95
Federal Special Revenue Fund	\$60,074	\$60,074
Total Funding Costs	\$60,074	\$60,074

PERFORMANCE INDICATORS:

1. Training will be conducted in a manner that achieves each of the training objectives "a" through "d" listed above under "Services Provided."
2. A child death review team will be created with guidelines to regulate its operations.
3. DFS will provide funding for a Montana child abuse hotline and assure that the handling of calls follows DFS guidelines and state child abuse reporting laws and procedures.

Exhibit #5-
3-17-93
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TARGETS:

1. Provide training in the handling of cases of child sexual abuse to 45 DFS social workers each year, including training for the social work supervisor who conducts this portion of the training for new DFS workers.
2. Establish a child death review team and guidelines for its operation by July 1993.
3. Continue the current level of funding for the Montana child abuse hotline, which will be expected to answer at least 900 calls per year.

DFS: CHILDJUS.293

Exhibit #5
3-17-93
#B-168

Cry, the Beloved Children

by Rita Swan

1991

Children's Healthcare Is a Legal Duty
Box 2604, Sioux City IA 51106
712-948-3500

FROM :

PHONE NO. :

Exhibit #5
3-17-93
HB-168
P81

Children's Healthcare Is a Legal Duty, Inc.

Rita Swan, President

Box 2804 • Sioux City, Iowa 51103 • Phone or FAX 712-948-3500

Board of Directors

Rita Swan, Ph.D.
Sioux City, Iowa

Douglas Swan, Ph.D., Chair
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Vice Chairman of Pediatrics
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John Klemm, Attorney
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Wichita, Kansas

Audrey Unruh-Schneider
Advocacy Liaison
Institute for Child Health Policy
Gainesville, Florida

Ela Zandov, Pediatrician
Birmingham, Ohio

March 11, 1993

JOHN MELCHER, ATTORNEY
MONTANA DEPT. OF FAMILY SERVICES
P O BOX 8005
HELENA MT 59604-8005

Dear Mr. Melcher:

The purpose of our organization is to prevent religiously-based medical neglect of children. We oppose statutory exemptions that allow parents to substitute religious rituals or quackery for the medical care that a child needs.

You have asked for information on the status of exemptions in other states for faith-healing or non-medical remedial treatment. We are happy to provide it. Thirty-eight states have religious exemptions in their civil codes, while an additional six states have exemptions for "non-medical remedial treatment." The six are Montana, Nebraska, Maryland, North Carolina, South Carolina, and Tennessee.

The states that have no exemption either for religion or non-medical remedial treatment in their civil codes are West Virginia, Massachusetts, New York, Ohio, South Dakota, and Hawaii.

To our knowledge, 21 states have religious exemptions in their criminal codes: Alabama, Alaska, Arkansas, California, Colorado, Delaware, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Ohio, Oregon, Texas, and West Virginia.

Only two states have no exemption either for religion or non-medical remedial treatment in either the criminal or civil codes. They are South Dakota and Hawaii.

These exemptions have contributed to hundreds of preventable deaths of children nationwide. They encourage parents to believe that the state has endorsed prayer as a legal substitute for the medical care that the child needs. The parents do not comprehend the risk they are taking with their child's life when they believe the state has endorsed their behavior. The exemptions also discourage would-be reporters from reporting their knowledge of a sick child to Child Protection Services. In some cases they have prevented investigation and court ordering of

QUESTIONS AND ANSWERS ON RELIGIOUS EXEMPTIONS FROM PARENTAL DUTIES OF CARE

Prepared by CHILD, Inc., Box 2604, Sioux City IA 51106

1. Are these religious exemptions mandated by the First Amendment?

No. The courts have never ruled that freedom of religion gives anyone the right to cause or allow injury to a child. Courts have consistently ruled that freedom of belief is absolute, but freedom to act out religious beliefs can be limited by vital state interests. The issue here is not an adult's freedom of religion, but whether an adult can impose his or her religion on a child to the child's detriment.

2. Will repeal of these exemptions cause excessive state intrusion in families?

Repeal should not cause harassment of parents by the state. Repeal would simply establish a uniform standard. All parents would be required to provide necessary medical care. The state has no right to investigate parents because of community prejudice against their religion. The state must have reason to believe that a specific threat to the welfare of a child exists before it can investigate an allegation of child abuse.

3. Are court orders adequate to protect children associated with faith-healing sects?

No. Court orders have worked fairly well to protect children of Jehovah's Witnesses because the Witnesses object only to blood transfusions. They take their children regularly to doctors, who know when a transfusion is needed and quickly get the courts to order the procedure.

Several sects, however, object to nearly all medical treatment and diagnosis. When their children are ill, parents and fellow church members are usually the only ones who know about it. The courts have no reliable way to learn the illnesses of these children in time to save their lives.

Children are helpless. They cannot assert rights for themselves. Someone must have a legal responsibility to care for them. Parents have custody of children and should therefore have a duty to provide needed medical care. The state cannot monitor children's health continuously.

4. Should the state punish loving parents who are acting out sincere religious beliefs?

To establish a legal duty, the state has to spell out a penalty for failure to obey. That is the only way laws establish a duty, and that is true for everything from running a red light to murder.

Religious exemptions put the state in the position of announcing in advance that parents have the right to withhold lifesaving medical care on religious grounds. This is a death sentence for children. The state must have the option of prosecution available to create a parental duty to care for the child.

5. Can the state set a clear standard on when to seek medical care?

The state should not require anyone to seek medical treatment for trivial, self-limiting illnesses. Many child protection laws require parents to provide "adequate food, clothing, shelter, and medical care." There are variations in what is considered adequate in each of these areas; the state allows a range of behavior. But there is also a point at which a reasonable, prudent parent would recognize that a child might be seriously ill or injured. At that point the state should require the parent to seek medical attention.

6. Should medicine have "a monopoly" on treating children? Does repeal of religious exemptions outlaw spiritual healing?

The Christian Science church publishes data on the failures of medicine and then asks if medicine should be the only legal health care. But who is being narrow-minded? No one is trying to outlaw prayer. Doctors are willing for people of any denomination to pray for their patients. It is the Christian Science church that says medicine and prayer cannot be combined.

Religious exemptions make prayer a legal *substitute* for the medical care needed by a sick child. Parents should not be allowed to deprive a sick child of all the vast resources of twentieth-century medicine. The only health care that the state should recognize for seriously ill children is state-licensed, secular health care.

7. Can the law change behavior motivated by religious belief?

From our observation, laws can change behavior motivated by religious belief. We believe many parents would be relieved to obey state laws if the state would make its standards clear. Having a clear legal duty relieves the parents of breaking moral laws of the church. But even if clear laws cannot always prevent a tragedy, we would still say that the state has a moral obligation to set forth a standard in defense of a child's right to live.

8. Doesn't faith healing have evidence that it works?

Faith healing has thousands of anecdotal accounts of healing. The body has a rich array of processes for healing itself. Also, the mind and spirit do impact upon disease and health. But religious healing does not have controlled studies or statistical data to indicate that it can heal diseases that ordinarily require medical intervention. It usually lacks appropriate documentation for its anecdotal accounts.

9. Hasn't Christian Science won a lot of recognition as a health care system?

Most insurance companies will reimburse for the bills that Christian Science practitioners send for their prayers. The Internal Revenue Services allows deductions for these bills as a medical care expense. Medicare/Medicaid reimburses for care given by unlicensed church nurses in Christian Science nursing homes.

The Christian Science church uses such recognitions as evidence that Christian Science deserves legal status as health care for children. But they were not given because of any evidence that Christian Science heals disease. The state has a moral and legal obligation to safeguard the lives of minor children. It should not allow unlicensed methods to substitute for medical care of seriously ill children.

10. The number of children dying from religious beliefs against medical care is a tiny fraction of total child abuse. Is it worth the effort to repeal religious exemptions?

Repeatedly, one hears that religious exemptions enter state codes because legislators do not want larger issues jeopardized. To be sure, only a small number of children are injured by religious beliefs against medical care, but they still have rights. Our form of government is supposed to stand up for the rights of the individual. These children have a Fourteenth Amendment right to equal protection of the laws.

CALLS FOR REPEAL OF RELIGIOUS EXEMPTIONS

American Academy of Pediatrics:

The Committee on Bioethics asserts that (1) the opportunity to grow and develop safe from physical harm with the protection of our society is a fundamental right of every child; (2) the basic moral principles of justice and of protection of children as vulnerable citizens require that *all* parents and caretakers must be treated equally by the laws and regulations that have been enacted by state and federal governments to protect children; (3) all child abuse, neglect, and medical neglect statutes should be applied without potential or actual exemption for religious beliefs; (4) no statute should exist that permits or implies that denial of medical care necessary to prevent death or serious impairment to children can be supported on religious grounds; (5) state legislatures and regulatory agencies with interests in children should be urged to remove religious exemption clauses from statutes and regulations. . . .

Claims of exemption from responsibility for care—as defined above—should not be honored on religious or philosophical grounds, and offending parents or caretakers should not be treated more or less stringently than those who make no such claims. The Academy must unequivocally defend the rights of *all* children to the protection and benefits of the law and medicine when physical harm—or life itself—is in the balance.

Pediatrics 81(Jan 1988): 169-71

American Medical Association:

The Board recognizes that the constitutional guarantee of freedom is a cherished right, but. . . that its preservation does not sanction harm to others. In these cases helpless children become the innocent victims. State statutes should not expand the ability of persons claiming freedom of religion to deprive children in their control of necessary medical care.

Report JJ (I-86)

National Committee for Prevention of Child Abuse:

NCPCA reaffirms its position that children have a right to a healthy and nurturing environment. When the denial by parents due to religious beliefs of available necessary medical care is life threatening or may be disabling, then the child's rights and interests take precedence over the rights and interests of the parents or caregivers. Therefore all child abuse, neglect, and medical neglect statutes should be applied to provide equal protection to all children without potential or actual exemption for religious belief of their parent or caretaker.

NCPCA Memorandum Dec 1990/Jan 1991

National District Attorneys Association:

WHEREAS, all children are entitled to equal access to all available health care, and WHEREAS, all parents shall be held to the same standard of care in providing for their children, and all parents shall enjoy both equal protection and equal responsibilities under law, regardless of their religious beliefs,

BE IT THEREFORE RESOLVED that the National District Attorneys Association shall join with other child advocacy organizations to support legislation to repeal exemptions from prosecution for child abuse and neglect.

NDAAs policy position adopted 14 July 1991

Iowa Conference of the United Methodist Church:

WHEREAS: We acknowledge that spirit and flesh are not enemies but are both blessed by God. Thus, medical care is a gift of God, a miracle of research and love brought through God's grace and love and human compassion and dedication to doing good, and

WHEREAS: Several children have died in recent years because of religious beliefs against medical care, and

WHEREAS: Our courts have consistently ruled that freedom of religion does not extend to allowing harm to come to others;

THEREFORE, BE IT RESOLVED: That the Iowa Annual Conference affirms prayer as an important factor in holistic healing, but should not serve as a legal substitute for medical care when the life of a minor is at stake;

FURTHER, BE IT RESOLVED: that the Iowa Annual Conference supports changes in Iowa law to maintain that children are entitled to life-saving medical care along with food, clothing and shelter regardless of their parents' religious beliefs.

Resolution 8304 adopted June 1991

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Distributed by CHILD Inc., Box 2604, Sioux City IA 51106, Ph. 712-948-3500

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MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on March 19, 1993,
at 3:00 pm.m

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Tom Hager

Members Absent:

Staff Present: Tom Gomez, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 190, HB 148
Executive Action: HB 158, HB 107, HB 610, HJR 4, HB 168

HEARING ON HB 148

Opening Statement by Sponsor:

Rep. Alvin Ellis, Jr., House District 84, said HB 148 is a simple
piece of legislation. He said the important part of the bill is
on Page 2, Line 13.

Proponents' Testimony:

Mary Lou Garrett, Administrative Assistant for the Board of
Chiropractors, provided written testimony from the Chairman of
the Board of Chiropractors. (Exhibit #1)

Questions From Committee Members and Responses:

Chairman Eck said that nurse practitioners could also be primary care providers. Sen. Franklin said that was correct. Sen. Klampe said he foresaw turf battles, and this should be kept in mind. The doctors and nurse practitioners should be kept away from conflict.

Sen. Franklin said nurse practitioners are not providing a new function. They are functioning well with physicians in many major cities, and it has not been a turf battle because it has been an on-going discussion. They are doing different things with some common tools.

Chairman Eck said that HJR 4 is something that came from the Legacy Legislature, and does nothing more than encouraging an endorsement of supports at Montana State University to develop a nurse practitioner program.

Motion/Vote:

Sen. Mesaros moved HJR 4 BE CONCURRED IN. The motion carried UNANIMOUSLY. Sen. Bob Brown will carry the bill on the Floor of the Senate.

EXECUTIVE ACTION ON HB 168

Discussion:

Ann Gilkey said she had seen the amendment. (Exhibit #6) She said she had spoken with federal officials in Denver who said including "substantial risk of harm" language was fine. However, it is contradictory to the preceding sentence.

Sen. Towe went over the amendment. (Exhibit #6) Withholding medical care solely for religious proposes should not be the basis for finding child abuse or neglect.

Tom Gomez said the language in the amendment came from already existing Montana statute.

Sen. Towe said he had concerns that the term "substantial" was not strong enough.

Ms. Gilkey said "substantial" was as strong as the language could be. The federal government does not agree to "life threatening."

Sen. Christiaens asked Ms. Gilkey how would "substantial risk" be proven by an attorney. Ms. Gilkey said that would depend on the case.

Sen. Christiaens asked Ms. Gilkey if there had been cases in Montana where a child had been taken from the parents for medical treatment. Ms. Gilkey said she was aware of none.

Sen. Christiaens asked Ms. Gilkey if, under current law, it could be done. Ms. Gilkey said it would be difficult with the religious exemption in the law.

Sen. Franklin said it would be appropriate to have language that gives judges clear direction. Sen. Franklin said she was satisfied with the amendment.

Sen. Towe said the language read "substantial risk of harm" not "not substantial harm."

Sen. Klampe asked what was meant by "imminent." Sen. Towe said it meant "immediate." Sen. Rye said it "could happen in the near future."

Sen. Klampe said he did not like the language.

Sen. Towe said the reason the language "imminent or substantial risk of harm" was included is that language is already in the Montana Codes.

Motion:

Sen. Franklin moved the amendment without the second sentence. (Exhibit #6)

Discussion:

Sen. Rye said he valued the life of a child and the freedom to exercise religious beliefs, which made voting for or against the amendment difficult. One must be subordinated to the other in this case, and he was not comfortable doing this. Sen. Rye urged the Committee members to vote for the amendment, and he would vote against it.

Sen. Christiaens said he shared the same feelings as Sen. Rye.

Sen. Towe said the language in the first sentence of the amendment covers the issue well.

Sen. Rye said he would prefer to keep the second sentence in the amendment.

Chairman Eck said it was her understanding that the parents or guardians could not be charged with child abuse or neglect (by withholding medical care) because of religious beliefs. On the other hand, in the case of imminent or substantial risk of harm, a judge can insist a child gets (medical) care. The parents are still not charged with abuse.

Sen. Towe said he accepted the decision of the United States Supreme Court on this issue. Sen. Towe mentioned the case of snake charmers.

Vote:

The motion to adopt the amendment without the second sentence carried UNANIMOUSLY.

Motion:

Sen. Franklin moved the second set of amendments to HB 168.
(Exhibit #7)

Discussion:

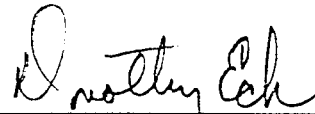
Sen. Towe went over the amendments. (Exhibit #7)

Motion/Vote:

Sen. Christiaens moved that HB 168 BE CONCURRED IN AS AMENDED.
The motion carried UNANIMOUSLY. Sen. Franklin will carry the
bill on the Floor of the Senate.

ADJOURNMENT

Adjournment: Chairman Eck adjourned the hearing at 5:00 p.m.



SENATOR DOROTHY ECK, Chair



LAURA TURMAN, Secretary

DE/LT

ROLL CALL

SENATE COMMITTEE Public Health DATE 3-19-93

[illegible]

FC8

Attach to each day's minutes

41

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 22, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 168 (first reading copy -- blue), respectfully report that House Bill No. 168 be amended as follows and as so amended be concurred in.

Signed: _____

Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 6.

Strike: "IN ACCORDANCE"

Insert: "AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND
NEGLECT LAWS IN ORDER TO CONFORM"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS 40-8-111,"

Following: "41-3-102,"

Insert: "AND 41-3-609,"

3. Page 1, lines 19 through 23.

Following: "neglected" on line 19

Insert: ""

Strike: remainder of line 19 through "welfare" on line 23

Insert: "means the state or condition of a child who has suffered
child abuse or neglect"

4. Page 1, line 24.

Following: "(3)"

Insert: "(a)"

5. Page 1, line 25.

Strike: "health"

6. Page 2, line 4.

Following: line 3

Insert: "(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child."

AG and second

Sen Franklin

7. Page 2, line 6.

Following: line 5

Insert: "(5)(a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare."

Renumber: subsequent subsections

8. Page 3, line 3.

Following: "education, or"

Insert: "adequate"

9. Page 6.

Following: line 6

Insert: "Section 2. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(7)(d)(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of

the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)(d)~~(8)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.""

-END-

Amendments to House Bill No. 168
Third Reading Copy

For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 26, 1993

1. Page 1, line 24.

Following: "(3)"

Insert: "(a)"

2. Page 2, line 4.

Following: line 3

Insert: "(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. The mere withholding of medical care in the practice of religious beliefs may not be considered child abuse or neglect. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

DATE 3-19-93
Bill No. HB 168Amendments to House Bill No. 168
Third Reading Copy

For the Senate Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 25, 1993

1. Title, line 6.

Strike: "IN ACCORDANCE"

Insert: "AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND
NEGLECT LAWS IN ORDER TO CONFORM"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS 40-8-111,"

Following: "41-3-102,"

Insert: "41-3-609,"

3. Page 1, lines 19 through 23.

Following: "neglected" on line 19

Insert: ""

Strike: remainder of line 19 through "welfare" on line 23

Insert: "means the state or condition of a child who has suffered
child abuse or neglect"

4. Page 1, line 25.

Strike: "health"

5. Page 2, line 6.

Following: line 5

Insert: "(5)(a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in
subsection (8); or(ii) threatened harm to a child's health or welfare, as
defined in subsection (15).(b) The term includes harm or threatened harm to a child's
health or welfare by the acts or omissions of a person
responsible for the child's welfare."

Renumber: subsequent subsections

6. Page 3, line 3.

Following: "education, or"

Insert: "adequate"

7. Page 6.

Following: line 6

Insert: "Section 2. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption
of a child may be decreed when there have been filed written
consents to adoption executed by:(a) both parents, if living, or the surviving parent of a
child, provided that consent is not required from a father or

mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)~~~~(d)~~(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) - the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)~~~~(d)~~(8)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.""

HOUSE BILL NO. 168

INTRODUCED BY REHBEIN

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ADEQUATE HEALTH CARE" IN ACCORDANCE AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND NEGLECT LAWS IN ORDER TO CONFORM WITH FEDERAL REQUIREMENTS; AND AMENDING SECTION SECTIONS 40-8-111, 41-3-102, AND 41-3-609, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" child means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his the child's parent or other person responsible for his the child's welfare MEANS THE STATE OR CONDITION OF A CHILD WHO

HAS SUFFERED CHILD ABUSE OR NEGLECT.

(3) (A) "Adequate health care" means any medical or nonmedical-remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(B) NOTHING IN THIS CHAPTER MAY BE CONSTRUED TO REQUIRE OR JUSTIFY A FINDING OF CHILD ABUSE OR NEGLECT FOR THE SOLE REASON THAT A PARENT, DUE TO RELIGIOUS BELIEFS, DOES NOT PROVIDE MEDICAL CARE FOR A CHILD. HOWEVER, NOTHING IN THIS CHAPTER MAY BE CONSTRUED TO LIMIT THE ADMINISTRATIVE OR JUDICIAL AUTHORITY OF THE STATE TO ENSURE THAT MEDICAL CARE IS PROVIDED TO THE CHILD WHEN THERE IS IMMINENT OR SUBSTANTIAL RISK OF HARM TO THE CHILD.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (A) "CHILD ABUSE OR NEGLECT" MEANS:

(I) HARM TO A CHILD'S HEALTH OR WELFARE, AS DEFINED IN SUBSECTION (8); OR

(II) THREATENED HARM TO A CHILD'S HEALTH OR WELFARE, AS DEFINED IN SUBSECTION (15).

(B) THE TERM INCLUDES HARM OR THREATENED HARM TO A CHILD'S HEALTH OR WELFARE BY THE ACTS OR OMISSIONS OF A PERSON RESPONSIBLE FOR THE CHILD'S WELFARE.

(6) "Department" means the department of family

1 services provided for in 2-15-2401.

2 †6†(7) "Dependent youth" means a youth:

3 (a) who is abandoned;

4 (b) who is without parents or guardian or not under the
5 care and supervision of a suitable adult;

6 (c) who has no proper guidance to provide for his
7 necessary physical, moral, and emotional well-being;

8 (d) who is destitute;

9 (e) who is dependent upon the public for support; or

10 (f) whose parent or parents have voluntarily
11 relinquished custody of--the-child and whose legal custody
12 has been transferred to a licensed agency.

13 †7†(8) "Harm to a child's health or welfare" means the
14 harm that occurs whenever the parent or other person
15 responsible for the child's welfare:

16 (a) inflicts or allows to be inflicted upon the child
17 physical or mental injury;

18 (b) commits or allows to be committed sexual abuse or
19 exploitation of the child;

20 (c) causes failure to thrive or otherwise fails to
21 supply the child with adequate food or fails to supply
22 clothing, shelter, education, or ADEQUATE health care,
23 though financially able to do so or offered financial or
24 other reasonable means to do so;

25 (d) abandons the child by leaving him the child under

1 circumstances that make reasonable the belief that the
2 parent or other person does not intend to resume care of the
3 child in the future or by willfully surrendering physical
4 custody for a period of 6 months and during that period does
5 not manifest to the child and the person having physical
6 custody of the child a firm intention to resume physical
7 custody or to make permanent legal arrangements for the care
8 of the child; or

9 (e) is unknown and has been unknown for a period of 90
10 days and reasonable efforts to identify and locate the
11 parents have failed.

12 †8†(9) "Limited emancipation" means a status conferred
13 on a dependent youth by a court after a dispositional
14 hearing in accordance with 41-3-406 under which the youth is
15 entitled to exercise some but not all of the rights and
16 responsibilities of a person who is 18 years of age or
17 older.

18 †9†(10) "Mental injury" means an identifiable and
19 substantial impairment of the child's intellectual or
20 psychological functioning.

21 †10†(11) "Physical injury" means death, permanent or
22 temporary disfigurement, or impairment of any bodily organ
23 or function and includes death, permanent or temporary
24 disfigurement, and impairment of a bodily organ or function
25 sustained as a result of excessive corporal punishment.

1 ~~(11)~~(12) "Sexual abuse" means the commission of sexual
2 assault, sexual intercourse without consent, indecent
3 exposure, deviate sexual conduct, or incest, as described in
4 Title 45, chapter 5, part 5.

5 ~~(12)~~(13) "Sexual exploitation" means allowing,
6 permitting, or encouraging a child to engage in a
7 prostitution offense, as described in 45-5-601 through
8 45-5-603, or allowing, permitting, or encouraging sexual
9 abuse of children as described in 45-5-625.

10 ~~(13)~~(14) "Social worker" means an employee of the
11 department of-family-services whose duties generally involve
12 the provision of either child or adult protective services,
13 or both.

14 ~~(14)~~(15) "Threatened harm to a child's health or
15 welfare" means substantial risk of harm to the child's
16 health or welfare.

17 ~~(15)~~(16) "Withholding of medically indicated treatment"
18 means the failure to respond to an infant's life-threatening
19 conditions by providing treatment (including appropriate
20 nutrition, hydration, and medication) that, in the treating
21 physician's or physicians' reasonable medical judgment, will
22 be most likely to be effective in ameliorating or correcting
23 ~~all--such~~ the conditions. However, the term does not include
24 the failure to provide treatment (other than appropriate
25 nutrition, hydration, or medication) to an infant when, in

1 the treating physician's or physicians' reasonable medical
2 judgment:

3 (a) the infant is chronically and irreversibly
4 comatose;

5 (b) the provision of such treatment would:

6 (i) merely prolong dying;

7 (ii) not be effective in ameliorating or correcting all
8 of the infant's life-threatening conditions; or

9 (iii) otherwise be futile in terms of the survival of
10 the infant; or

11 (c) the provision of such treatment would be virtually
12 futile in terms of the survival of the infant and the
13 treatment itself under such the circumstances would be
14 inhumane. For purposes of this subsection, "infant" means an
15 infant less than 1 year of age or an infant 1 year of age or
16 older who has been continuously hospitalized since birth,
17 who was born extremely prematurely, or who has a long-term
18 disability. The reference to less than 1 year of age may not
19 be construed to imply that treatment should be changed or
20 discontinued when an infant reaches 1 year of age or to
21 affect or limit any existing protections available under
22 state laws regarding medical neglect of children over 1 year
23 of age.

24 ~~(16)~~(17) "Youth in need of care" means a youth who is
25 dependent, abused, or neglected as defined in this section."

SECTION 2. SECTION 40-8-111, MCA, IS AMENDED TO READ:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(7)(d)(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to

the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed

by a representative of the court."

SECTION 3. SECTION 41-3-609, MCA, IS AMENDED TO READ:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)~~(d)(8)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time,

the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

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1 (3) In considering any of the factors in subsection (2)
2 in terminating the parent-child relationship, the court
3 shall give primary consideration to the physical, mental,
4 and emotional conditions and needs of the child. The court
5 shall review and, if necessary, order an evaluation of the
6 child's or the parent's physical, mental, and emotional
7 conditions.

8 (4) A treatment plan is not required under this part
9 upon a finding by the court following hearing if:

10 (a) two medical doctors submit testimony that the
11 parent is so severely mentally ill that such person cannot
12 assume the role of parent;

13 (b) the parent is incarcerated for more than 1 year and
14 such treatment plan is not practical considering the
15 incarceration; or

16 (c) the death of a sibling caused by abuse or neglect
17 by the parent has occurred."

-End-